

**IN THE COURT OF APPEALS OF IOWA**

No. 8-464 / 07-1702  
Filed February 19, 2009

**IN THE MATTER OF THE MENCHHOFER  
FAMILY TRUST A**

**VICKI LYNN BELTER, TRUSTEE OF THE  
MENCHHOFER FAMILY TRUST A,**  
Petitioner-Appellee,

**vs.**

**AMERICAN DIABETES ASSOCIATION,  
ALZHEIMER DISEASE RESEARCH, and  
PREVENT BLINDNESS AMERICA,**  
Respondents-Appellants.

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Appeal from the Iowa District Court for (North) Lee County, Michael J. Schilling, Judge.

Appeal from the order authorizing payment of inheritance taxes from the trust corpus and authorizing investigation of a trustor's pre-death gifts.

**AFFIRMED.**

Diane Kutzko and Gary Streit of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellants.

Michael Rashid and William Cahill of Hirsch, Adams, Putnam, Cahill & Rashid, P.L.C., Burlington, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**SACKETT, C.J.**

The respondents-appellants, three charitable residuary beneficiaries<sup>1</sup> of the Menchhofer Family Trust, appeal from the district court's ruling that the Iowa inheritance taxes owed by twenty individual trust beneficiaries be paid by the trust, rather than by the individual beneficiaries. They contend the decision is contrary to the intent of the trustor as expressed in the trust agreement and it unfairly shifts the tax burden to the residuary beneficiaries, all of whom are exempt from taxation. They also appeal from the ruling that the costs of investigating gifts from one trustor to certain beneficiaries be paid by the trust, contending the trust agreement does not authorize such expenditures. We affirm.

**I. Background.**

Clarence and Carrie Menchhofer, while residents of California, executed a trust agreement in 1989 as part of an estate plan. They also executed wills that would "pour over" the assets of the last to die into the trust.<sup>2</sup> They amended the trust in 1996 and 1999. After Clarence died in 2001, Carrie moved to Iowa. Over a three year period before her death, Carrie made gifts and forgave loans totaling over \$541,000 to three of the twenty named beneficiaries. After Carrie, still a resident of Iowa, died in 2005, the successor trustee began to "wind down" the administration of the trust with a view to distributing the trust assets and terminating the trust. The trustee petitioned the Iowa district court to invoke its

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<sup>1</sup> The fourth residuary beneficiary, a church, is not a party to this appeal.

<sup>2</sup> The trust agreement provided for the creation of trust A, the survivor's trust, and trust B, the exemption trust, upon the death of either Clarence or Carrie. Only trust A is at issue in this appeal. For ease of reference, we use "trust" throughout the remainder of the decision to refer to trust A.

jurisdiction over the trust, to approve certain matters concerning the affairs of the trust, including payment of Iowa inheritance taxes from the trust, and to open an estate for Carrie to investigate the gifts. See Iowa Code § 633A.6202 (Supp. 2005).

The three charitable organizations, which are residuary beneficiaries of the trust answered and objected to the petition.

A hearing was held, after which the court invoked its jurisdiction over the trust, interpreted the trust under California law, authorized the trustee to pay such Iowa inheritance taxes from the trust as would allow the individual beneficiaries the full federal estate tax exemption, and authorized the trustee to spend trust income to investigate the gifts Carrie made and to pay an attorney for the estate to be opened.

## **II. Scope of Review.**

The parties agree our review is de novo. Iowa R. App. P. 6.4; see *also* Iowa Code § 633.33; *In re Wulf*, 526 N.W.2d 154, 156 (Iowa 1994).

## **III. Merits.**

**A. Inheritance Tax.** The appellants contend the district court erred in determining that the trust provided for the Iowa inheritance tax of the twenty individual beneficiaries to be paid from the trust. The language at issue in the trust agreement provides:

Section 5.03. *On the death of the Surviving Trustor, the Trustee shall pay either from the income or principal of the Trust, the expenses of the Surviving Trustor's last illness, funeral and burial, and any federal estate tax and state death taxes that may be due by reason of the inclusion of any portion of the Trust Estate in the Surviving Trustor's estate for the purposes of any such tax, unless the Trustee in the Trustee's discretion determines that other*

adequate provisions have been made for the payment of expenses and taxes.

(Emphasis supplied.)

Appellants argue the court erred in applying the California statutory definition of “estate taxes” to defeat the “clear direction” of the trust agreement that the trust should bear only the taxes assessed on the trust corpus itself. The trust language provides for the trust to pay taxes “due by reason of inclusion of any portion of the trust estate in the surviving trustor’s estate.”

The trust agreement was drafted in California, executed by California residents, and contained a provision that “the validity of, construction of, and all rights under the trusts provided for” be governed by California law. Consequently, the district court found as do we that the trust should be construed under California law.

The trust provided the individual beneficiaries would share the amount that would not incur federal estate tax, that is, they would share the amount exempted from federal estate tax, which, at the time of Carrie’s death was \$1,500,000. The balance of the trust was to be divided equally among the residuary beneficiaries.

The shares of the individual beneficiaries are subject to inheritance tax, see Iowa Code §§ 450.5 (liability for tax), and the individual beneficiaries enjoy no individual inheritance tax exemption. See Iowa Code § 450.9. Iowa inheritance tax is not collected on property that passes to appellants, as they are charitable, religious or education entities. See Iowa Code § 450.4(2). Iowa inheritance tax must ultimately be paid by the beneficiary unless the provisions and language used in the will or a trust document, considered as a whole, direct otherwise. To provide otherwise requires a testator’s direction by clear and

express words or necessary implication. *In re Estate of Tedford*, 258 Iowa 890, 894, 140 N.W.2d 908, 911 (Iowa 1966).

A testator may, by appropriate provisions in his or her will or trust document, shift the burden of taxation so as to relieve certain gifts at the expense of others. *See id.* Courts have the task of construing such provisions according to the intent of the testator, not only by the language and arrangement of the provisions, but by all the attendant circumstances. *Id.* However, where the provision is clear and there are no circumstances to suggest the intent was otherwise than as expressed in it, the courts give it full effect. *Id.*; *see also In re Estate of McCullough*, 243 Iowa 449, 457, 52 N.W.2d 67, 72 (1952); *In re Estate of Johnson*, 220 Iowa 424, 425, 262 N.W. 811, 812 (1935).

The district court provided us with a thoroughly-researched and carefully-reasoned decision on appeal. The court determined the words “death taxes” in section 5.03 of the trust was defined broadly enough in the California code to include Iowa inheritance taxes.

“Death tax” means any tax levied by a state on account of the transfer or shifting of economic benefits in property at death, or in contemplation thereof, or intended to take effect in possession or enjoyment at or after death, whether denominated an “inheritance tax,” “transfer tax,” “succession tax,” “estate tax,” “death duty,” “death dues,” or otherwise.

Cal. Rev. & Tax. Code § 13830(c) (2006). “State” is defined as “any state, territory, or possession of the United States, or the District of Columbia.” *Id.* § 13830(e). The court then examined the phrase from section 5.03, “that may be due by reason of the inclusion of any portion of the Trust Estate in the Surviving Trustor’s estate for the purposes of any such tax” to determine whether that language was a “clear and unambiguous” expression of the trustors’ intent that

the general rule of apportionment should not be applied. *In re Estate of Armstrong*, 17 366 P.2d 490, 494 (Cal. 1961) (requiring a “clear and unambiguous” expression of intent not to follow the general rule of apportionment). The court considered the testimony of attorney Burl Waits, who drafted the trust agreement for the Menchhofers, that Clarence and Carrie did not want any of their money to go to taxes, that they wanted it to go to the heirs and charities. The court concluded the language of the trust agreement was not ambiguous.

Considering the trust document as a whole, the Court concludes that the plain meaning of Section 5.03 is that “any state death tax,” including the Iowa inheritance tax, should be paid from trust income or principal because the tax “became due by reason of the inclusion of a portion of the trust estate passing to Carrie’s estate.” This Court FINDS Section 5.03 is a direct, unequivocal statement by the Trustors that the general rule for apportionment of Iowa inheritance taxes does not apply to Trust A under the circumstances found in this case. Section 5.03 is written to require these taxes to be paid by the trust.

The court noted it would have arrived at the same conclusion even if it had determined the language was ambiguous.

De novo interpretation of written instruments, including trusts, “presents a question of law unless interpretation turns on the competence or credibility of extrinsic evidence or a conflict therein.” *Ike v. Doolittle*, 70 Cal.Rptr.2d 887, 900 (Cal. Ct. App. 1998). “[T]he intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it.” *Id.* at 900-01.

In interpreting a document such as a trust, it is proper for . . . the appellate court on de novo review to consider the circumstances under which the document was made so that the court may be placed in the position of the testator or trustor whose language it is

interpreting, in order to determine whether the terms of the document are clear and definite, or ambiguous in some respect.

*Id.* at 901 (citation omitted).

We agree with the district court that the terms at issue in the trust agreement are unambiguous. From our review of the applicable case and statutory law from California, we come to the same conclusion as the district court, that the term “death tax” in the trust agreement includes Iowa state inheritance taxes. The statutory definition specifically includes taxes “on account of the transfer or shifting of economic benefits in property at death.” Cal. Rev. & Tax. Code § 13830(c). The trustors specified that the trust was to pay any death tax. The district court correctly determined the Iowa inheritance taxes due should be paid from the trust income or principal. Because the trust agreement provided in section 4.01 that the Trust A portion of the trust estate is the survivor’s trust, it is included in Carrie’s estate because she was the second to die. We agree with the district court that the language of section 5.03 encompasses Iowa’s inheritance tax and that it provides for the trust to pay such taxes. We therefore affirm on this issue.

**B. Gifts.** The charitable residuary beneficiaries contend the district court erred in determining the trust should pay the costs and fees associated with investigating the circumstances under which Carrie made gifts and forgave loans in the last few years before her death. They contend the record is devoid of any evidence Carrie lacked capacity to make the gifts and the individual beneficiaries would be disproportionately benefitted if the gifts were brought into the trust. The trustee contends the gifts should be investigated because they were sizeable,

they benefitted only three of the individual beneficiaries to the detriment of the others, and they appear to frustrate the intent the Menchhofers' estate plan.

The district court considered both whether the trust agreement allows payment of such investigative costs and fees from the trust corpus and whether there was any basis for investigating the gifts, and said:

The Court believes that the intent of the Trustors will be facilitated by an investigation of Carrie's gifts. The trust scheme envisioned equal shares being passed to named beneficiaries. The gifts appear inconsistent with this scheme. Although the record is unclear about the circumstances of any one gift, there is evidence that Carrie was blind before she died. Her medical condition raises the specter that there may have been some undue influence or fraud by third parties. The large amount of the gifts is another major factor that justifies investigation. Finally, the Trustee is duty-bound to administer the trust with fairness and loyalty to all beneficiaries. The Trustee could properly determine in this case that the 18 beneficiaries who did not receive gifts, as well as the charitable beneficiaries, deserve an investigation to satisfy the questions which quite naturally arise under these circumstances.

The district court did an extensive analysis of the language of the trust and California law before concluding the trust could hire a specified law firm and spend no more than \$4000 to investigate the circumstances of the gifts. We agree with the district court's careful analysis on this issue and believe, as did the district court, that such fees can be paid from the trust.

The next question is whether there is an unfairness to the charities in providing for payments under these facts.

In *In re Estate of Law*, 253 Iowa 599, 603, 113 N.W.2d 233, 235 (1962), the Iowa court addressed the issue of a nominated executor obligating a decedent's estate for attorney fees in an action challenging decedent's will and indicated that in instances where no special interest of the estate appears, expense to the estate may not be justified, and at times to allow fees as estate

costs would compel the contestant to share in the cost of attorney fees of the party determined to be wrong.

There can be no definite rules as to when an executor or administrator can legally obligate an estate to pay expenses and attorney fees connected with litigation. *Id.* at 602, 113 N.W.2d at 234. The circumstances of each case must be assessed to determine if the fees are reasonably required or justified in the interest of the estate. For an attorney to be paid fees by a fiduciary, it is generally necessary to show a benefit to the estate and just cause for pursuing the matter. *See generally In re Estate of Cory*, 184 N.W.2d 693, 698-99 (Iowa 1971).

There is inequity in allowing an executor or trustee to justify the depletion of an estate by attorney fees to support the interests of heirs as against a claimant or claimants. *See In re Estate of Roggentien*, 445 N.W.2d 388, 390 (Iowa Ct. App. 1989). In *Roggentien*, we determined there are no hard and fast rules, and we look instead to the balancing of equities. *Id.* We considered (1) the nature of the proceeding, (2) the course of action needed to be taken, (3) the fact because of the size of the estate the ultimate issue was between claimant and heirs, and (4) whether the heirs should have been forced to conduct litigation at their own expense. *Id.*

This is a substantial trust. We cannot say the charities would not benefit if money is returned to the trust. We believe a limited investigation is justified and not inequitable to the charities. We affirm on this issue.

**IV. Summary.**

We affirm the district court's determination the language of the trust clearly expresses the trustors' intention that the inheritance taxes on the trust assets passing to the individual beneficiaries be paid from the trust corpus to allow the maximum amount to pass to those beneficiaries. We affirm the district court's order authorizing the trustee to pay to investigate gifts made by Carrie before her death.

**AFFIRMED.**